

Entered on Docket
April 29, 2009
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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed: April 28, 2009

EDWARD D. JELLEN
U.S. Bankruptcy Judge

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(Bar No. 131105)
CHARLES N. BENDES, ESQ.
(Bar No. 70126)
CHRIS D. KUHNER, ESQ.
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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re
A.F. EVANS COMPANY, INC.,
Debtor.

Case No. 09-41727 EDJ

Chapter 11

**ORDER APPROVING
DEBTOR'S CONTINUED USE
OF CASH COLLATERAL
PURSUANT TO REVISED
SECOND AMENDMENT TO
STIPULATION REGARDING
CASH COLLATERAL AND
ADEQUATE PROTECTION**

Date: April 16, 2009
Time: 2:30 pm
Ctrm: 215

This matter came on for a further continued hearing on April 16, 2009, on the Motion for Approval of Cash Collateral Stipulation Granting Replacement Lien and Other Adequate Protection ("Motion") filed by A.F. Evans Company, Inc. ("Debtor"). The Debtor filed prior to the hearing a Second Amendment to Stipulation Regarding Cash Collateral and Adequate Protection (the "Second Amendment") between the Debtor and City National Bank ("City National Bank"), and at the hearing counsel for the Debtor, City National Bank and other interested parties announced that the Second Amendment would be revised to address input from

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REGARDING CASH COLLATERAL AND ADEQUATE PROTECTION

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1 interested parties. No party opposed the relief sought by the Motion on the terms of what the
 2 parties described would be a revised Second Amendment. The Debtor and City National Bank
 3 have since entered into, and the Debtor has filed, a Revised Second Amendment to Stipulation
 4 Regarding Cash Collateral and Adequate Protection (the "Revised Second Amendment") to
 5 incorporate the comments and revisions relayed to the Court. The cash collateral stipulation
 6 between the Debtor and City National Bank, as has been previously amended by a First
 7 Amendment, and as further amended by the Revised Second Amendment, including the amended
 8 budget, is referred to herein as the "Stipulation." The Court having reviewed the Motion and the
 9 Stipulation, including the Revised Second Amendment, and good cause appearing,

10 **IT IS HEREBY ORDERED** as follows:

11 1. The Debtor is authorized on a further interim basis, pursuant to the provisions of
 12 §§ 361, 363(c), and 363(e) of Title 11 of the United States Code ("Bankruptcy Code"), 11 U.S.C.
 13 § 101, *et seq*, to continue to use Cash Collateral (as defined in the Motion) for the limited duration
 14 of the Term (as defined in the Revised Second Amendment) in accordance with the budget
 15 attached as Exhibit A to the Revised Second Amendment ("Budget"), to the limited extent
 16 permitted by the terms of the Stipulation. The Debtor shall be precluded from any use of Cash
 17 Collateral beyond the Term, except as may be permitted by subsequent Order of the Court after
 18 appropriate notice and opportunity for hearing. No further hearing on the Motion has been
 19 requested or scheduled at this time.

20 2. City National Bank shall be entitled to all of the protections set forth in the
 21 Stipulation, including, without limitation, the replacement liens, adequate protection payments and
 22 administrative expense priority set forth therein at the times and subject to the limitations stated in
 23 the Stipulation and the Budget.

24 3. This order shall not prohibit CP III Evans, LLC ("CP III Evans") from pursuing
 25 any rights it may have under any security interest in any property that is not property of this
 26 bankruptcy estate, and this order does alter or modify any contractual rights and duties between
 27 non-debtor parties.

28 4. To the extent that the Debtor consumes any cash collateral in which the Court

ORDER APPROVING DEBTOR'S CONTINUED USE
 OF CASH COLLATERAL PURSUANT TO REVISED
 SECOND AMENDMENT TO STIPULATION
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determines CP III Evans has a perfected first priority lien, and to the extent such use results in the diminution of the value of CP III Evans' interest in such cash collateral, CP III Evans is granted a replacement lien in an amount equal to such diminution, which lien shall attach to the personal property of the Debtor, whether now owned or existing or hereafter acquired, created or arising, and all products and proceeds thereof, of the same type and character, as the Debtor's property from which such cash collateral was generated (but not including any rights of the Debtor to avoidance actions under Chapter 5 of the Bankruptcy Code); provided that nothing in this order shall operate as a waiver of or modification of any parties rights which are expressly reserved, except as set forth in the Stipulation and this order. Unless an Event of Default exists under Section 9(b) of the Stipulation due to Debtor's failure to timely make required monthly adequate protection payments to City National Bank or the Term of the Stipulation has otherwise terminated, CP III Evans shall also be entitled to receive monthly adequate protection payments in the amount of \$6,000 at such times as provided in Stipulation and Budget. Notwithstanding anything contained in the Stipulation, the Budget may not be amended to alter, impair or delete the amount of, or change the timing of, the adequate protection payments to be made to CP III Evans without CP III Evans' consent; provided, however, that such monthly adequate protection payments to CP III Evans shall terminate if CP III Evans commences any remedial actions against Debtor or its affiliated entities (other than entry into and/or enforcement of any stipulated judgment, confession of judgment, or the taking of any other remedial action against or entry into any transaction with Mr. Arthur Evans).

5. The Debtor is authorized and directed to fund the trust account of counsel for the Official Unsecured Creditors Committee ("Committee") in the amount set forth in the Budget for the month of April 2009 by no later than five business days following entry of this Order, and to fund the trust account of Committee counsel in the amount set forth in the Budget for the months of May and June 2009 by no later than May 20, 2009, and June 20, 2009, respectively; provided however, that any and all such funds shall be held in trust by Committee counsel and shall not be applied against any fees or expenses of Committee counsel unless and until allowed by the Court on an interim or final basis.

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***END OF ORDER**

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SECOND AMENDMENT TO STIPULATION
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